SUPREME COURT, U. S.

FILED

FEB 5 1971

E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1212

RALPH LEON CHAHOC

versus

HUNT SHIPYARD, A DIVISION OF HUNT TOOL COMPANY and INSURANCE COMPANY OF NORTH AMERICA

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINION BELOW

The opinion below is reported officially in 431 F.2d 576.

QUESTIONS PRESENTED FOR REVIEW

The question posed by the petition presents merely the threshold issue to the ultimate issue presented for review, namely, whether respondent's motion for summary judgment was properly granted. In its motion for summary judgment, respondent advanced three separate grounds for the dismissal of petitioner's complaint.

The opinions below are based simply on this threshold issue, namely, that under the facts of this case, the drydock was not a vessel as a matter of law. Before a cause of action can be stated, however, petitioner must also show that Chahoc was doing work traditionally done by seamen and that the factors which compelled this Court to disregard the literal language of the LHWA in *Reed v. Yaka*, 373 U.S. 410, 83 S.Ct. 1349 (1963) are present here as well. *Chahoc v. Hunt Shipyard*, 431 F.2d 576, 577 (CA 5 1970).

ARGUMENT

The threshold issue, whether a drydock under the facts of this case is not a vessel as a matter of law, was previously presented to this Court in *Atkins v. Greenville Shipbuilding Corporation*, 411 F.2d 279 (CA 5 1969) *cert. denied* 396 U.S. 846, 90 S.Ct. 105 (Oct. 13, 1969). Since this Court's action in *Atkins*, *supra*, there has been no significant change in the jurisprudence. The alleged conflict of *Atkins* with *Bernardo v. Bethlehem Steel Company*, 314 F.2d 604 (CA 2 1963) was urged by the petitioner in *Atkins* and the alleged conflict of *Atkins* with *United States v. Moran Towing & Transportation Co.*, 374 F.2d 656 (CA 4 1967) simply does not exist.

In *Moran*, the Court does not conclude that a floating drydock, while moored to the bank and operating as a drydock, is a vessel, it merely concludes as follows:

> "We conclude that this floating drydock while *unmoored and under tow* was within the meaning of the Wreck Act. . ." *United States v. Moran Towing & Transportation Co.*, 374, F.2d 656, 663 (CA 4 1967). (Emphasis ours).

On this threshold issue, therefore, we submit that no conflict exists between the Circuits and the present petition should be denied.

Two additional reasons exist, however, for denial of the present petition. Even if the drydock was a vessel, Chahoc was not doing work traditionally done by seamen, See *United N. Y. and N. J. Pilots Association v. Halecki*, 358 U.S. 613 (1959); *West v. United States*, 361 U.S. 118 (1959); *Roper v. United States*, 368 U.S. 20 (1961); *Berryhill v. Pacific Far East Line*, 238 F.2d 385 (9 Cir., 1956), cert. den. 354 U.S. 938 (1957); *Ocean Drilling & Exploration Company v. Berry Bros. Oilfield Service, Inc.*, 377 F.2d 511 (5 Cir., 1967); *Moye v. Sioux City & New Orleans Barge Lines, Inc.*, 402 F.2d 238 (5 Cir., 1968); *Parker v. Cargill, Inc.*, 417 F.2d 772 (5 Cir., 1969); *Berge v. National Bulk Carriers, Inc.*, 148 F.Supp. 608 (S.D. N.Y., 1957); *Raidy v. United States*, 153 F.Supp. 777 (D. Md., 1957), affirmed 252 F.2d 117 (4 Cir., 1958); *Warren v. Pacific Inland Navigation Company*, 204 F. Supp. 31 (D. Ore., 1962); *Madden v. United States*, 259 F.Supp. 663 (D. Mass., 1966).

Finally, even if the drydock was a vessel and Chahoc was doing the work traditionally done by seamen, the factors which compelled this Court to disregard the literal language of the Longshoremen's and Harbor Workers' Act in *Reed v. YAKA* are not presented here.

In *Reed v. YAKA*, *supra* this Court was faced with a situation where one group of longshoremen, whose duties involved the loading and unloading of ships of nonemployers, were protected by the warranty of seaworthiness, while a second group of longshoremen doing exactly the same type of work on vessels operated by their em-

ployer were not protected by the warranty. This, this Court reasoned, was an arbitrary and unjust situation. An injured longshoreman's legal remedies, this Court stated, should not be determined by the signature of his paycheck. "All were subjected to the same danger. All were entitled to like treatment under law." 373 U.S. at 415, 10 L. Ed. 2d at 543, citing *Pope & Talbot, Inc. v. Hawn*, 346, 413, 74 S. Ct. 202, 98 L. Ed. 143, 152 (1953).

In *Reed v. YAKA*, this Court found an overriding and compelling circumstance which it felt required the disregarding of the literal wording of the exclusiveness of liability provision of the Longshoremen's and Harbor Workers' Compensation Act. That compelling situation was the distinction theretofore existing in the law between the remedies of longshoremen who were employed by the owner or operator of the offending vessel and the remedies of longshoremen not employed by the owner or operator of the offending vessel.

In the present case, this Court is concerned with drydock workers working on a floating drydock. There are three basic types of drydocks: the marine railway and the graving dock both of which are on land, and the floating drydock. The men who worked upon these three different types of drydocks all do substantially the same type of work. There is no arbitrary and unreasoned distinction drawn between different groups of drydock workers. Under the present state of the law, all drydock workers are being treated equally, the precise result for which this Court strove and achieved in *Reed v. YAKA*. All drydock workers injured while engaged in work upon drydocks of all these types have a remedy under the Longshoremen's and Harbor Workers' Compensation Act. As the law now stands, no drydock workers of any variety

have a right to sue their employers under the general maritime law for negligence and/or for the unseaworthiness of the drydock upon which they are working. Equally, and without distinction, workers on marine railways, on graving docks and on floating drydocks are treated alike under the law.

Thus, to afford to petitioner the relief here sought would create the very arbitrary distinction between workmen who are subject to the same risk which this Court refused to permit in *Reed v. YAKA*.

CONCLUSION

For the reasons stated above, Respondent respectfully suggests that there are no special or important reasons present in this case to support the granting of the Petition for a Writ of Certiorari. The decisions of the Court of Appeal in *Atkins* and in the instant case are sound. There is no reason for further review.

Respectfully submitted,

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February , 1971

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